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-and -

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Attorneys for the Responsible Officer

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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EMPYREAN INVESTMENT FUND, LP,	:
EMPYREAN GENERAL PARTNER, LLC,	:
ASH MASTER FUND, LP, ASH MASTER	:
FUND II, LLC, ASH MASTER FUND II,	:
LP, ASH FUND, LP f/k/a EMPYREAN	:
FUND LP, EMPYREAN	:
FUND, LP, ASH FUND, LP f/k/a	:
EMPYREAN INVESTMENT FUND, LP	:
ASH FUND II LP, ASH CAPITAL, LLC f/k/a	:
ASH CAPITAL MANAGEMENT, ASH	:
GENERAL PARTNER, LLC, ASH OFFSHORE	:
FUND LTD, ASH GENERAL PARTNER	:
OFFSHORE, LTD, ASH MARKET	:
NEUTRAL FUND, LTD and RAUF ASHRAF,	:
	:
Defendants - Appellants,	Case No. 08-cv-06938
-v.-	:
ALAN NISSELSON, as Chapter 11	:
Trustee of MarketXT Holdings Corp., and the	:
Official Committee of Unsecured Creditors,	:
	:
Plaintiffs - Appellees.	:
	:

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PLAINTIFFS'-APPELLEES' JOINT COUNTER-DESIGNATION
OF THE RECORD ON APPEAL

Pursuant to Federal Rule of Bankruptcy Procedure 8006, the plan committee (the “Plan Committee”)
 under the confirmed Joint Plan of Liquidation under Chapter 11 dated April 1, 2008, as modified (the “Plan”),

of the substantively consolidated estate of MarketXT Holdings Corp. ("Holdings"), MKXT, LLC, MarketXT, Inc., and Epoch Investments, LP f/k/a Empyrean Investments, LP ("Epoch" and collectively, the "Consolidated Debtor" or the "Debtors"), together with Alan Nisselson, as the responsible officer (the "Responsible Officer") under the Plan (collectively with the Plan Committee, the "Plaintiffs"), hereby file this Joint Counter-Designation of the Record on Appeal.

**Counter-Designation of the Record in Nisselson et al. v. Empyrean Investment Fund, LP et al.,
Adv. Proc. No. 05-01268 (ALG), Bankruptcy Court, Southern District of New York**

Item No.	Date	Document No.	Description
1.	12/2/2005	96	Motion for Preliminary Injunction MOTION FOR ORDER CLAIRFYING AND MODIFYING ORDER AND GRANTING RELATED RELIEF filed by Jennifer Lauren Saffer on behalf of Ash Capital, LLC f/k/a Ash Capital Management, Ash Fund II LP, Ash Fund LP f/k/a Empyrean Fund LP, Ash General Partner Offshore, LTD, Ash General Partner, LLC, Ash Master Fund, Ash Master Fund II, LLC, Ash Master Fund II, LP, Ash Offshore Fund LTD, Empyrean General Partner, Empyrean Investment Fund, Rauf Ashraf. with hearing to be held on 12/13/2005 at 02:30 PM at Courtroom 617 (ALG) (Saffer, Jennifer) (Entered: 12/02/2005)
2.	12/9/2005	97	Opposition to Defendants' Motion for an Order Clarifying and Modifying Order and for Related Relief (related document(s)96) filed by Alan Nisselson on behalf of Alan Nisselson. (Attachments: # 1 Affidavit of Service) (Nisselson, Alan) (Entered: 12/09/2005)
3.	12/12/2005	98	Reply to Motion EMPYREAN ENTITIES' (I) REPLY TO PLAINTIFFS'OPPOSITION TO MOTION FOR ORDER CLARIFYING AND MODIFYING ORDER AND GRANTING RELATED RELIEF; AND (II) DTATEMENT IN FURTHER SUPPORT OF MOTION (related document(s)96) filed by Jennifer Lauren Saffer on behalf of Ash Capital, LLC f/k/a Ash Capital Management, Ash Fund II LP, Ash Fund LP f/k/a Empyrean Fund LP, Ash General Partner Offshore, LTD, Ash General Partner, LLC, Ash Master Fund, Ash Master Fund II, LLC, Ash Master Fund II, LP, Ash Offshore Fund LTD, Empyrean General Partner, Empyrean Investment Fund, Rauf Ashraf. (Attachments: # 1 Exhibit Exhibit A# 2 Exhibit Exhibit B) (Saffer, Jennifer) (Entered: 12/12/2005)

Item No.	Date	Document No.	Description
4.	12/15/2005	107	Transcript of Hearing Held on 12/13/05 filed by TypeWrite Word Processing Service. (Richards, Beverly) (Entered: 01/24/2006)
5.	1/10/2006	101	Memorandum of Opinion Signed on 1/10/2006 Re: Contempt, Consolidation, Joinder and Modification (Porter, Marguerite) (Entered: 01/10/2006)
6.	1/13/2006	102	Notice of Settlement of an Order Granting and Denying Various Motions (related document(s)69, 96, 45, 70, 101) filed by Alison Claire Gilbert on behalf of Alan Nisselson. with hearing to be held on 1/23/2006 at 04:00 PM at Courtroom 617 (ALG) Objections due by 1/23/2006, (Attachments: # 1 Exhibit Order Granting Motion for Contempt# 2 Exhibit Order Denying Motion for Consolidation# 3 Exhibit Order Denying Motion to Modify Restraining Order# 4 Exhibit Order Granting Motion to Amend Complaint# 5 Affidavit of Service)(Gilbert, Alison) (Entered: 01/13/2006)
7.	1/23/2006	106	Objection to Motion Proposed Order Granting Motion for Contempt filed by Gary G. Pelletier on behalf of the Defendants. (Attachments: # 1 Revision Revised Proposed Order) (Pelletier, Gary) (Entered: 01/23/2006)
8.	1/26/2006	114	Order Denying Motion to Modify Restraining Order So Ordered 1/25/2006 (related document(s)96) (Porter, Marguerite) (Entered: 01/26/2006)
9.	1/27/2006	116	Order Signed on 1/27/2006 Granting Motion for Contempt (Porter, Marguerite) (Entered: 01/27/2006)
10.	3/21/2006	151	Judgment and Order signed on 3/20/2006. Judgment decreeing that the Trustee is awarded judgment against the Defendants, jointly and severally, in the amount of \$6,700,000.00 solely with respect to their noncompliance with the Contempt Order. JUDGMENT INDEX NUMBER BC 06.0165 (Rouzeau, Anatin) (Entered: 03/21/2006)
11.	12/12/2006	275	Motion to Authorize Purge of Contempt filed by Jeffrey A. Denner on behalf of the Defendants. with hearing to be held on 1/9/2007 (check with court for location) Responses due by 1/8/2007, (Attachments: # 1 Exhibit A# 2 Exhibit B) (Denner, Jeffrey) (Entered: 12/12/2006)

Item No.	Date	Document No.	Description
12.	12/12/2006	276	Memorandum of Law in Support of Motion to Purge Contempt (related document(s)275) filed by Jeffrey A. Denner on behalf of the Defendants. (Denner, Jeffrey) (Entered: 12/12/2006)
13.	1/5/2007	279	Memorandum of Law / Plaintiffs' Memorandum Of Law In Opposition To Defendants' Motion To Purge Contempt (related document(s)276, 275) filed by Lester M. Kirshenbaum on behalf of Official Committee of Unsecured Creditors of MarketXT Holdings Corp.. (Kirshenbaum, Lester) (Entered: 01/05/2007)
14.	1/5/2007	280	Declaration Of Elan M. Ben-Avi (related document(s)279) filed by Lester M. Kirshenbaum on behalf of Official Committee of Unsecured Creditors of MarketXT Holdings Corp.. with hearing to be held on 1/9/2007 (check with court for location) (Attachments: # 1 Exhibits A through E) (Kirshenbaum, Lester) (Entered: 01/05/2007)
15.	1/9/2007	284	Reply to Motion Opposition by Plaintiffs re: Defendants' Motion to Purge Contempt filed by Jeffrey A. Denner on behalf of the Defendants. (Denner, Jeffrey) (Entered: 01/09/2007)
16.	2/16/2007	298	Letter to Hon. Allan L. Gropper filed by Jeffrey A. Denner on behalf of the Defendants. (Denner, Jeffrey) (Entered: 02/16/2007)
17.	2/16/2007	299	Letter to The Honoroable Allan L. Gropper (related document(s)298) filed by Lester M. Kirshenbaum on behalf of Official Committee of Unsecured Creditors of MarketXT Holdings Corp.. (Kirshenbaum, Lester) (Entered: 02/16/2007)
18.	2/26/2007	310	Letter To Honorable Allan L. Gropper (related document(s)278, 309, 301, 302) filed by Lester M. Kirshenbaum on behalf of Official Committee of Unsecured Creditors of MarketXT Holdings Corp.. (Kirshenbaum, Lester) (Entered: 02/26/2007)
19.	2/28/2007	313	Letter To The Honorable Allan L. Gropper (related document(s)312) filed by Lester M. Kirshenbaum on behalf of Official Committee of Unsecured Creditors of MarketXT Holdings Corp.. (Kirshenbaum, Lester) (Entered: 02/28/2007)

Item No.	Date	Document No.	Description
20.	6/26/2007	320	Transcript Of Hearing Held On March 14, 2007 At 11:05 AM, Re: Motion By Trustee To Disallow And Expunge The Duplicate, Amended Or Superceded Claims; Motion By Trustee To Disallow And Expunge Claim No. 131 filed by TypeWrite Word Processing Service. (Braithwaite, Kenishia) (Entered: 06/27/2007)

Dated: New York, New York
 August 27, 2008

KAYE SCHOLER LLP

/s/ Lester M. Kirshenbaum

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FUND LP, EMPYREAN	:	
FUND, LP, ASH FUND, LP f/k/a	:	
EMPYREAN INVESTMENT FUND, LP	:	
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FUND LTD, ASH GENERAL PARTNER	:	
OFFSHORE, LTD, ASH MARKET	:	
NEUTRAL FUND, LTD and RAUF ASHRAF,	:	
Defendants - Appellants,	:	Case No. 08-cv-06938
-v.-	:	
ALAN NISSELSON, as Chapter 11	:	
Trustee of MarketXT Holdings Corp., and the	:	
Official Committee of Unsecured Creditors,	:	
Plaintiffs - Appellees.	:	
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AFFIDAVIT OF SERVICE

I, Gurnel Jean-Louis, being duly sworn, deposes and says:

I am over the age of eighteen years, am employed by the offices of KAYE SCHOLER LLP, and am not a party to this action.

On the 27th day of August, 2008, I caused a true and correct copy of the *Plaintiffs'- Appellees'*

Joint Counter-Designation of The Record on Appeal to be served upon the parties as indicated on the annexed service list.

s/ Gurnel Jean-Louis

Gurnel Jean-Louis

Sworn to before me this
27th day of August, 2008

s/ Gloria I. Hartman

Notary Public, State of New York
No.01HA4895141
Qualified in Suffolk County
Commission Expires May 26, 2011

SERVICE LIST

Served By Electronic Mail

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